

NOT FOR PUBLICATION (For Upload)

IN THE DISTRICT COURT OF THE VIRGIN ISLANDS  
DIVISION OF ST. THOMAS AND ST. JOHN

EVARISTO RIOS, TERRI POLAK, AND EVE	)	
HERBST,	)	
	)	
Plaintiffs,	)	
	)	Civ. No. 85-280
v.	)	
	)	
ANGEL LEBRON, Commissioner of	)	
Conservation and Cultural Affairs;	)	
JOSEPH SUTTON, Deputy Chief of	)	
Conservation and Cultural Affairs;	)	
GEORGE FARRELLY, Commissioner of	)	
Public Safety; JUAN LUIS, Governor	)	
of the Virgin Islands,	)	
	)	
Defendants.	)	

**ATTORNEYS :**

**Clive Rivers, Esq.**  
St. Thomas, U.S.V.I.  
*For the plaintiff Evaristo Rios,*

**Kenth Rogers, Esq.**  
St. Thomas, U.S.V.I.  
*For the plaintiff Terri Polak,*

**Iver Stridiron, Esq.**  
St. Thomas, U.S.V.I.  
*For the defendants.*

**MEMORANDUM**

Moore, J.

On July 22, 1985, the plaintiffs Evaristo Rios and Terri Polak filed this action seeking declaratory and injunctive relief enjoining the defendants, Angel Lebron, Commissioner of Conservation and Cultural Affairs, Joseph Sutton, Deputy Chief of

Conservation and Cultural Affairs, George Farrelly, Commissioner of Public Safety, and Juan Luis, Governor of the Virgin Islands, from prohibiting the plaintiffs from operating their vending business across from the Drake Seat site. The plaintiffs alleged, *inter alia*, that the defendants revoked the plaintiffs' vendor location permits without notice and an opportunity for a hearing, and that this action violated the Due Process Clause of the Fourteenth Amendment. (See Compl. ¶¶ 21-22.) On that same day, the plaintiffs also applied for a temporary restraining order.

On July 23, 1985, District Judge David O'Brien held a hearing and granted the motion for a temporary restraining order. On July 25, 1985, the Court convened again for a hearing on the merits of the plaintiffs' request for injunctive relief. At the hearing, Judge O'Brien granted a preliminary injunction. Judge O'Brien found that the plaintiffs were itinerant vendors whose goods traveled with them and further held that the provisions of 23 V.I.V. § 92, which provides for police permits, together with the license issued by the Department of Consumer Affairs, constituted the necessary procedures for the plaintiffs to establish an entitlement to conduct their business across from the Drake Seat site. Judge O'Brien concluded that, once having been granted, the permit could not be revoked without due

process, that is, notice and a hearing. On September 17, 1985, the Court entered an order *nunc pro tunc* to July 25, 1985, memorializing its findings, including "[t]hat a permit, once having been granted by the Department of Public Safety for whatever period of time, cannot be revoked without due process of law," and ordering that the "plaintiffs are granted a preliminary injunction barring the Department of Conservation and Cultural Affairs from denying plaintiffs the right to conduct their businesses at the location across from the Drake Seat site pursuant to valid permits issued to them by the Department of Public Safety." (See Order Granting Prelim. Injunct. at 2-3.)

Since 1985, of course, there have been changes in the Virgin Islands government. Charles Turnbull now serves as the governor, replacing named defendant Juan Luis, and Franz Christian now serves as the Commissioner of Public Safety, replacing named defendant George Farrelly. In addition, it appears from recent pleadings filed by the parties that Ira Hobson, as Commissioner of Housing, Parks, and Recreation, has replaced Angel Lebron, the former Commissioner of Conservation and Cultural Affairs, at least insofar as that office may have jurisdiction over the granting and revocation of vendors' licenses at the Drake Seat location. Thus, these three government officials appear currently to be the government officials directly subject to this

Court's preliminary injunction, which, although never made permanent, has never been revoked, at least according to the Court's records.

The plaintiffs claim they have been forcibly prevented from exercising the rights under their permits to conduct business at the Drake Seat site. According to the pleadings filed by the plaintiffs, the plaintiffs received a letter on November 30, 2000, from Commissioner Ira Hobson advising them that effective December 1, 2000, their permits to operate their business opposite Drake's Seat would be revoked. The plaintiffs further allege that on December 1, 2000, the plaintiffs were forcibly prevented from setting up their businesses at the site. This action, according to the plaintiffs, constitutes a violation of the preliminary injunction entered fifteen years ago.

On December 13, 2000, plaintiff Evaristo Rios moved this Court to order the defendants' successors to appear and show cause why they should not be held in contempt for violating the preliminary injunction, which since 1985 has neither been terminated nor dissolved. On December 21, 2000, plaintiff Terri Polak filed a similar motion, as well as a motion to make the preliminary injunction permanent.

Because it appears that the defendants may have violated the preliminary injunction, the Court will grant the plaintiffs'

motions for an order to show cause and order Ira Hobson, Commissioner of Housing, Parks, and Recreation, Franz Christian, Commissioner of Public Safety, and Charles Turnbull, Governor of the Virgin Islands, to appear and show cause why they should not be held in contempt. At the same time, the Court will hear arguments on the question whether the preliminary injunction should be made into a permanent injunction. The deadline for submitting a written response to the motion for a permanent injunction will be as set forth in the accompanying order. Finally, the plaintiffs must be restored forthwith to the same position they have occupied since the entry of the preliminary injunction and before December 1, 2000, the date the plaintiffs were allegedly prevented from conducting their business across from the Drake Seat site.

**ENTERED this 5th day of January, 2001**

**FOR THE COURT:**

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**Thomas K. Moore**  
**District Judge**

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JOSEPH SUTTON, Deputy Chief of )  
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GEORGE FARRELLY, Commissioner of )  
Public Safety; JUAN LUIS, Governor )  
of the Virgin Islands, )

Defendants. )

Civ. No. 85-280

---

**ATTORNEYS :**

**Clive Rivers, Esq.**

St. Thomas, U.S.V.I.

*For the plaintiff Evaristo Rios,*

**Kenth Rogers, Esq.**

St. Thomas, U.S.V.I.

*For the plaintiff Terri Polak,*

**Iver Stridiron, Esq.**

St. Thomas, U.S.V.I.

*For the defendants.*

**ORDER**

For the reasons set forth in the accompanying memorandum of even date, it is hereby

**ORDERED** that the plaintiffs' motions for an order to show cause is **GRANTED**. Ira Hobson, Commissioner of Housing, Parks, and Recreation, Franz Christian, Commissioner of Public Safety,

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and Charles Turnbull, Governor of the Virgin Islands, shall appear before the Court on Friday, January 12, 2001, at 2:00 p.m. to show cause why they should not be held in contempt for violating the preliminary injunction entered by this Court on September 17, 1985 *nunc pro tunc* to July 25, 1985. It is further

**ORDERED** that the defendants shall file with the Court and serve on the plaintiffs by 12:00 noon on Thursday, January 11, 2001, a written response to the motion to make the preliminary injunction permanent and the motion to intervene filed by Iris Martinez and Gloria Taylor. The parties shall be prepared to argue these motions at the hearing scheduled for Friday, January 12, 2001. It is further

**ORDERED** that, until this matter is resolved, the defendants shall preserve the status quo by restoring the plaintiffs to the positions they occupied before December 1, 2000.

**ENTERED this \_\_\_\_ day of January, 2001.**

**FOR THE COURT:**

\_\_\_\_\_  
**Thomas K. Moore**  
**District Judge**

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**ATTEST:**  
**WILFREDO MORALES**  
**Clerk of the Court**

By: \_\_\_\_\_  
Deputy Clerk

**Copies to:**

Honorable Geoffrey W. Barnard  
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